



## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-201-820]

#### Agreement Suspending the Antidumping Duty Investigation on Fresh Tomatoes from Mexico; Preliminary Results of 2019-2020 Administrative Review

AGENCY: Enforcement & Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that the respondents selected for individual examination, Bioparques De Occidente, S.A. de C.V. and its affiliates (Bioparques), Del Campo Y Asociados SA de CV and its affiliates (Del Campo), and Productora Agricola Industrial del Noroeste, SA de CV (Productora Agricola) and its affiliates (collectively Grupo Pinos), are in compliance with the Agreement Suspending the Antidumping Duty Investigation on Fresh Tomatoes from Mexico (2019 Agreement), for the period September 19, 2019, through August 31, 2020, and that the 2019 Agreement is meeting the statutory requirements under the Tariff Act of 1930, as amended (the Act).

DATE: Applicable (*Insert date of publication in the Federal Register.*)

FOR FURTHER INFORMATION CONTACT: Sally C. Gannon or David Cordell, Enforcement & Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230, telephone: (202) 482-0162 or (202) 482-0408, respectively.

#### SUPPLEMENTAL INFORMATION:

##### Background

On September 19, 2019, Commerce signed an agreement<sup>1</sup> under section 734(c) of the Tariff Act of 1930, as amended (the Act), with representatives of Mexican fresh tomato

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<sup>1</sup> See *Fresh Tomatoes From Mexico: Suspension of Antidumping Duty Investigation*, 84 FR 49987 (September 24, 2019) (2019 Agreement).

producers/exporters<sup>2</sup> accounting for substantially all imports of fresh tomatoes from Mexico, suspending the antidumping duty (AD) investigation on fresh tomatoes from Mexico.<sup>3</sup>

On September 25, 2020, the Florida Tomato Exchange (FTE),<sup>4</sup> a member of the U.S. petitioning industry, filed a request for an administrative review of the 2019 Agreement.<sup>5</sup> On September 30, 2020, Bioparques and Negocio Agrícola San Enrique S.A. de C.V. (NASE) also requested reviews.<sup>6</sup>

The review of the 2019 Agreement was initiated on October 30, 2020.<sup>7</sup> Commerce inadvertently identified the period of review (POR) as September 1, 2019, through August 31, 2020, but corrected the POR on January 7, 2021, to reflect the period from September 19, 2019 to August 31, 2020.<sup>8</sup> On January 7, 2021, Commerce selected mandatory respondents and issued its questionnaire to the three largest respondents, listed here in alphabetical order: Bioparques, Del Campo, and Productora Agrícola.<sup>9</sup>

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<sup>2</sup> The Mexican signatories are predominately represented by the following associations: Asociacion Mexicana de Horticultura Protegida, A.C., Asociacion de Productores de Hortalizas del Yaqui y Mayo, Confederacion de Asociaciones Agricolas del Estado de Sinaloa, A.C., Consejo Agrícola de Baja California, A.C., and Sistema Producto Tomate.

<sup>3</sup> *Id.*

<sup>4</sup> The members of the FTE are as follows: Ag-Mart Produce, Inc. dba Santa Sweets, Inc., Classie Produce, DiMare Homestead, Inc., DiMare Ruskin, Inc., Gargiulo, Inc., Kern Carpenter Farms, Lipman Family Farms, Mecca Family Farms, Inc., Michael Borek Farms, Pacific Tomato Growers, Ltd., Taylor & Fulton Packing, LLC, Tomatoes of Ruskin, Inc., TomPak, LLC, and West Coast Tomato, LLC.

<sup>5</sup> See Letter from FTE, “Fresh Tomatoes from Mexico: Request for Administrative Review,” dated September 25, 2020.

<sup>6</sup> See Letter from Bioparques and Letter from NASE, both entitled “Suspension Agreement on Fresh Tomatoes from Mexico — Request for Administrative Review,” each dated September 30, 2020. Bioparques and NASE explained they had requested reviews primarily to review each of the company’s own sales, and “the amount of any ... dumping margin involved in the {suspension} agreement.” Pursuant to section 751(a)(1)(c) of the Act, Commerce reviews “the current status of, and compliance with, any agreement by reason of which an investigation was suspended, and review the amount of any ... dumping margin involved in the agreement, in administrative reviews....” Because there is no dumping margin involved in the 2019 Agreement, in conducting this administrative review, we are not calculating new margins for the companies under review, as we would in an administrative review of an order. Rather, in addition to examining compliance with the terms of the agreement, generally, we are examining whether for the sales during the period of review the respondents complied with the price undertakings specified in section VI of the 2019 Agreement, *i.e.*, not making sales below the Reference Prices established in Appendix A and eliminating the required percentage of dumping from the original investigation, *i.e.*, 85 percent.

<sup>7</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 85 FR 68841 (October 30, 2020).

<sup>8</sup> See Memorandum, “2019-2020 Administrative Review of the 2019 Agreement Suspending the Antidumping Duty Investigation on Fresh Tomatoes from Mexico: Respondent Selection and Corrected Period of Review” (January 7, 2021). See also *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 86 FR 8166 (February 4, 2021) at footnote 10. As the 2019 Agreement was signed on September 19, 2019, this date is the beginning of the POR.

<sup>9</sup> *Id.* See also questionnaires issued individually to Bioparques, Del Campo and Productora Agrícola, each dated January 7, 2021.

## Scope of the 2019 Agreement

Merchandise covered by the 2019 Agreement is typically imported under the following heading of the HTSUS: tomatoes imported from Mexico covered by this Agreement are classified under the following subheading of the Harmonized Tariff Schedules of the United States (HTSUS), according to the season of importation: 0702. The tariff classification is provided for convenience and customs purposes; however, the written description of the scope of this 2019 Agreement is dispositive.<sup>10</sup>

## Methodology and Preliminary Results

Commerce has conducted this review in accordance with section 751(a)(1)(C) of the Act, which specifies that Commerce shall “review the current status of, and compliance with, any agreement by reason of which an investigation was suspended.” In this case, Commerce and representatives of the Mexican tomato producers/exporters accounting for substantially all imports of fresh tomatoes from Mexico signed the 2019 Agreement, which suspended the underlying antidumping duty investigation, on September 19, 2019. Pursuant to the 2019 Agreement, the Mexican signatories agreed that the subject merchandise would be subject to minimum reference prices and that at least 85 percent of the dumping from the original investigation would be eliminated.<sup>11</sup> The Mexican signatories also agreed to other conditions, including quarterly audits,<sup>12</sup> near-the-border inspections by the U.S. Department of Agriculture on all Round and Roma tomatoes and certain other types of tomatoes beginning on April 4, 2020,<sup>13</sup> and limits to adjustments to the sales price due to certain changes in condition and quality after shipment.<sup>14</sup>

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<sup>10</sup> For a complete description of the Scope of the 2019 Agreement, *see* Memorandum, “Decision Memorandum for the Preliminary Results of the 2019-2020 Administrative Review of the Agreement Suspending the Antidumping Duty Investigation on Fresh Tomatoes from Mexico,” dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

<sup>11</sup> *See 2019 Agreement*, 84 FR at 49990, at Price Undertaking.

<sup>12</sup> *See 2019 Agreement*, 84 FR at 49991, at Compliance Monitoring.

<sup>13</sup> *Id.* at Inspection of Subject Merchandise. *See also* Memorandum, “Frequently Asked Questions Regarding Inspections,” dated March 17, 2020.

<sup>14</sup> *See 2019 Agreement*, 84 FR 49996 at Appendix D.

After reviewing the information received to date from the respondent companies in their questionnaire and supplemental questionnaire responses, we preliminarily determine that the respondents have adhered to the terms of the 2019 Agreement, except for certain instances of inadvertent and/or inconsequential noncompliance, and that the 2019 Agreement is functioning as intended. Further, we preliminarily determine that the 2019 Agreement continues to meet the statutory requirements under sections 734(c) and (d) of the Act. For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum.

Commerce is addressing proprietary issues concerning each of the respondents in separate memoranda which we incorporate into the Preliminary Decision Memorandum<sup>15</sup>.

#### Verification

As provided in section 782(i)(3)(a) of the Act, Commerce intends to verify the information relied upon in making its final results. Normally, Commerce verifies information using standard procedures, including an on-site examination of original accounting, financial, and sales documentation. While we consider the possibility of conducting an on-site verification for some of the information submitted by the respondents, we may also need to verify the information relied upon in making the final results through alternative means in lieu of an on-site verification. Commerce intends to notify parties of its verification procedures.

#### Public Comment

Interested parties will be notified of the timeline for the submission of case briefs and written comments at a later date. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than seven days after the deadline date for case briefs.

Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.<sup>16</sup> Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this

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<sup>15</sup> See Preliminary Decision Memorandum at 6 and footnote 47.

<sup>16</sup> See *Temporary Rule*, 85 FR 17006; see also *Temporary Rule Modifying ADICVD Service Requirements Due to COVID-19; Extension of Effective Period*, 85 FR 41363 (July 10, 2020).

investigation are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.<sup>17</sup>

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Commerce intends to issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act, unless extended.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: September 24, 2021.

Ryan Majerus,  
Deputy Assistant Secretary  
for Policy and Negotiations.

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<sup>17</sup> See 19 CFR 351.309(c)(2) and (d)(2).